

2008

Delta Delta Delta an Illinois Nonprofit corporation
v. Theta Phi House Corporation of Delta Delta
Delta, a utah nonprofit corporation : Brief of
Appellant

Utah Court of Appeals

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John R. Lund; Leilani C. Marshall; Snow, Christensen & Martineau; Attorneys for Plaintiff.

Unknown.

Recommended Citation

Brief of Appellant, *Delta Delta Delta v. Theta Phi House*, No. 20080366 (Utah Court of Appeals, 2008).
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IN THE UTAH COURT OF APPEALS

DELTA DELTA DELTA, an Illinois)	
Nonprofit corporation,)	Case No. 20080366
Plaintiff/ Appellee,)	
)	District Ct. No. 060912357
vs.)	
THETA PHI HOUSE CORPORATION OF)	
DELTA DELTA DELTA, a Utah nonprofit)	
corporation,)	
Defendant / Appellant.)	

ADDENDUM TO BRIEF OF DEFENDANT / APPELLANT

1. ORDER GRANTING PARTIAL SUMMARY JUDGMENT
2. JUDGMENT VESTING TITLE
3. COMPLAINT
4. ANSWER and COUNTERCLAIM
5. TRANSCRIPT OF PROCEEDINGS
6. STATUTES: 16-6-50 to 16-6-52, IN EFFECT UNTIL 2000.

FILED
UTAH APPELLATE COURTS
OCT 01 2008

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IN THE UTAH COURT OF APPEALS

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ENTERED IN REGISTRY
OF JUDGMENTS
DATE 03/31/08

THIRD JUDICIAL DISTRICT COURT
Third Judicial District

MAR 27 2008

CLERK OF COURT
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DELTA DELTA DELTA, an Illinois non-profit corporation,

Plaintiff,

vs.

**THETA PHI HOUSE CORPORATION
OF DELTA DELTA DELTA**, a Utah
non-profit corporation.

Defendant.

**JUDGMENT VESTING TITLE PURSUANT
TO UT. R. CIV. P. 70**

Case No. 060912357

Judge Anthony B. Quinn

Pursuant to Utah R. Civ. P. Rule 70¹, and after full consideration of the
submissions of the parties, prior rulings by this Court, and the record in this case, the
Court hereby finds the following:

¹ RULE 70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if

1. Theta Phi House Corp. is subject to the bylaws and articles for which it was incorporated and those bylaws require it to convey title to the former Delta Delta Delta sorority house at the University of Utah to Plaintiff Delta Delta Delta.
2. There is ample consideration for this obligation. A tripartite relationship exists between the national fraternity, Delta Delta Delta, its Utah Delta Phi chapter and its Utah Theta Phi house corporation. The house corporation really only exists because it is the policy of the national fraternity to require its existence. The primary flow of revenue to the Utah Theta Phi house corporation was from Delta Delta Delta members at the Utah Theta Phi chapter who were required to live in the house and pay rent per the terms of chapter bylaws. Those chapter bylaw provisions were in turn required by the bylaws of Delta Delta Delta.
3. When Theta Phi House Corp. affiliated itself with Delta Delta Delta, it did so in accordance with the bylaws and articles. Substantial ongoing consideration was provided by DDD directly to Theta Phi House Corp. including the income stream for the operation of the Theta Phi House Corp. through Chapter bylaw provisions that required

done by the party. On application of the party entitled to performance and upon order of the court, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

Delta Delta Delta chapter members to live in the facility, consulting services performed for the operation of house corporations, form housing contracts, grants upon application and upon acceptance of the applications of same, loans, insurance policies obtained on a national basis, directors' and officers' liability insurance, and liability insurance for volunteers associated with the house corporation.

4. Theta Phi House Corp. is recognized and taxed by the Internal Revenue Service as a 501(c)(2) non-profit corporation. To qualify as a 501(c)(2) non-profit corporation, Theta Phi House Corp. represents to the IRS that it is a title holding company, that it is organized for the exclusive purpose of holding title to property for a parent organization which is exempt under IRC Section 501(a), collecting income from the property and turning over its excess income after allowable deductions to the parent organization. The parent organization for Theta Phi House Corp. is Delta Delta Delta, an Illinois not-for-profit corporation.

5. Even if there were not consideration shown, a third party beneficiary may enforce a promise made for his benefit even if that third party is a stranger both to the contract and to the consideration.. Delta Delta Delta is the intended third party beneficiary of the bylaw provision requiring conveyance of Theta Phi House Corporation's assets in the event of deactivation of the chapter. As such, Delta Delta Delta is entitled to have that provision enforced.

6. Plaintiff's Complaint requesting specific performance of obligations in the bylaws and articles of Theta Phi House Corp. is properly construed as a breach of contract claim. Under the liberal standard of notice pleading, Ut. R. Civ. P. 8(a); 8(f) (providing that all pleadings shall be construed as to do substantial justice), Defendant has been on notice of the nature of these claims since the inception of this case, and has briefed the dispositive motions accordingly. Delta Delta Delta's intention to seek enforcement of the obligations in the bylaws and articles is clear from the Complaint and that relief sounds in contract.

7. Further, when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Ut. R. Civ. P. 15(b). Failure to amend the pleadings to conform to the evidence does not affect the result of the trial of these issues. *Id.* The briefing submitted by Theta Phi House Corp. shows that it had notice of the nature of Delta Delta Delta's claims and asserts the defense of lack of consideration as the basis for its position.

8. Further, under Ut. R. Civ. P. 54(c)(1), "every judgment shall grant relief to which party in whose favor it is rendered is entitled, even if the party has not demanded such relief in its pleadings." Ut. R. Civ. P. 54(c)(1). Even if the relief of specific performance of a contractual obligation were not pled, the record before the court supports the entry of that relief in favor of plaintiff Delta Delta Delta.

9. Defendant Theta Phi House Corp. is therefore obligated to convey all interests it holds in the University of Utah property located at 1431 East 100 South, Salt Lake City, Utah 84102 to plaintiff Delta Delta Delta. The property is more particularly described as follows:

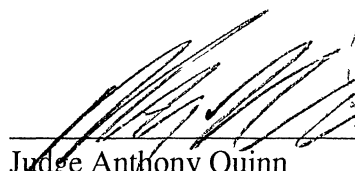
W 15 FT OF LOT 49 ALL LOT 50 & 10 FT OF LOT 51 BLK 3
FEDERAL HEIGHTS, according to the official plat thereof, recorded in
the office of the county recorder of Salt Lake County, Utah.

10. On February 14, 2008, the Court ordered Theta Phi House Corp. to duly execute a quit-claim deed within 10 days from the date of the order. To date, Theta Phi House Corp. has not executed a quit-claim deed on the University of Utah property.

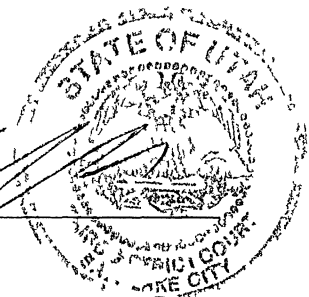
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that title to the University of Utah property (described supra, ¶9) is hereby divested of Theta Phi House Corp. and vested in Delta Delta Delta. Such judgment has the effect of a conveyance executed in due form of law.

DATED this 27th day of March, 2008.

BY THE COURT:



Judge Anthony Quinn
District Court Judge



FILED DISTRICT COURT
Third Judicial District

FEB 14 2008

SALT LAKE COUNTY
Deputy Clerk

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LEILANI C. MARSHALL (9662)
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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DELTA DELTA DELTA, an Illinois non-
profit corporation,

Plaintiff,

vs.

**THETA PHI HOUSE CORPORATION
OF DELTA DELTA DELTA**, a Utah
non-profit corporation.

Defendant.

**ORDER GRANTING PARTIAL SUMMARY
JUDGMENT**

Case No. 060912357

Judge Anthony B. Quinn

The cross motions for summary judgment of Plaintiff Delta Delta Delta and Defendant Theta Phi House Corporation came on for hearing before the Court on November 20, 2007. John R. Lund and Leilani C. Marshall, of the law firm Snow, Christensen & Martineau appeared for Plaintiff Delta Delta Delta, and Robert Mansfield, of the law firm VanCott, Bagley, Cornwall & McCarthy appeared for Defendant Theta Phi House Corporation ("Theta Phi House Corp.").

After full consideration of the submissions of the parties, it appears and the Court finds that Plaintiff Delta Delta Delta is entitled to summary judgment in part, for the reasons stated below:

1. Theta Phi House Corp. is subject to the bylaws and articles for which it was incorporated and those bylaws require it to convey title to the former Delta Delta Delta sorority house at the University of Utah to Plaintiff Delta Delta Delta.
2. There is ample consideration for this obligation. A tripartite relationship exists between the national fraternity, Delta Delta Delta, its Utah Theta Phi chapter and its Utah Theta Phi house corporation. The house corporation really only exists because it is the policy of the national fraternity to require its existence. The primary flow of revenue to the Utah Theta Phi house corporation was from Delta Delta Delta members at the Utah Theta Phi chapter who were required to live in the house and pay rent per the terms of chapter bylaws. Those chapter bylaw provisions were in turn required by the bylaws of Delta Delta Delta.
3. When Theta Phi House Corp. affiliated itself with Delta Delta Delta, it did so in accordance with the bylaws and articles. Substantial ongoing consideration was provided by DDD directly to Theta Phi House Corp. including the income stream for the operation of the Theta Phi House Corp. through Chapter bylaw provisions that required Delta Delta Delta chapter members to live in the facility, consulting services performed for the operation of house corporations, form housing contracts, grants upon application and

upon acceptance of the applications of same, loans, insurance policies obtained on a national basis, directors' and officers' liability insurance, and liability insurance for volunteers associated with the house corporation.

4. Theta Phi House Corp. is recognized and taxed by the Internal Revenue Service as a 501(c)(2) non-profit corporation. To qualify as a 501(c)(2) non-profit corporation, Theta Phi House Corp. represents to the IRS that it is a title holding company, that it is organized for the exclusive purpose of holding title to property for a parent organization which is exempt under IRC Section 501(a), collecting income from the property and turning over its excess income after allowable deductions to the parent organization. The parent organization for Theta Phi House Corp. is Delta Delta Delta, an Illinois not-for-profit corporation.

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6. Plaintiff's Complaint requesting specific performance of obligations in the bylaws and articles of Theta Phi House Corp. is properly construed as a breach of contract claim. Under the liberal standard of notice pleading, Ut. R. Civ. P. 8(a); 8(f) (providing that all

pleadings shall be construed as to do substantial justice), Defendant has been on notice of the nature of these claims since the inception of this case, and has briefed the dispositive motions accordingly. Delta Delta Delta's intention to seek enforcement of the obligations in the bylaws and articles is clear from the Complaint and that relief sounds in contract.

7. Further, when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Ut. R. Civ. P. 15(b). Failure to amend the pleadings to conform to the evidence does not affect the result of the trial of these issues. *Id.* The briefing submitted by Theta Phi House Corp. shows that it had notice of the nature of Delta Delta Delta's claims and asserts the defense of lack of consideration as the basis for its position.

8. Further, under Ut. R. Civ. P. 54(c)(1), "every judgment shall grant relief to which party in whose favor it is rendered is entitled, even if the party has not demanded such relief in its pleadings." Ut. R. Civ. P. 54(c)(1). Even if the relief of specific performance of a contractual obligation were not pled, the record before the court supports the entry of that relief in favor of plaintiff Delta Delta Delta.

9. Defendant Theta Phi House Corp. is therefore obligated to convey all interests it holds in the University of Utah property located at 1431 East 100 South, Salt Lake City, Utah 84102 to plaintiff Delta Delta Delta. The property is more particularly described as follows:

W 15 FT OF LOT 49 ALL LOT 50 & E 10 FT OF LOT 51 BLK 3
FEDERAL HEIGHTS, according to the official plat thereof, recorded in
the office of the county recorder of Salt Lake County, Utah (the "Theta
Phi Property")

10. Theta Phi House Corp. can and must perform that obligation by duly
executing the quit-claim deed which is attached to this order as Exhibit A and
defendant shall do so within ten days of the date of this order.

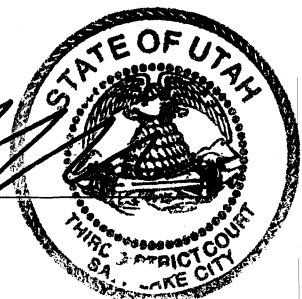
IT IS ORDERED that Plaintiff's Motion for Summary Judgment is
GRANTED in part, as to claims three and four (relating to conveyance of the
property). The Court reserves on claims one, two and four (relating to dissolution)
in Plaintiff's Complaint. Defendant's Motion for Summary Judgment is
DENIED.

DATED this 14 day of ^{FEB.}~~December~~, 2008.

BY THE COURT:



Judge Anthony Quinn
District Court Judge



FILED
THIRD DISTRICT COURT
06 JUL 27 AM 11:03
SALT LAKE DEPARTMENT
BY _____
DEPUTY CLERK

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DELTA DELTA DELTA, an Illinois non-profit corporation,

Plaintiff,

vs.

THETA PHI HOUSE CORPORATION OF DELTA DELTA DELTA, a Utah non-profit corporation.

Defendant.

COMPLAINT

Case No. 060912357

Judge Quinn

Plaintiff Delta Delta Delta complains of Theta Phi House Corporation of Delta Delta

Delta and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff Delta Delta Delta ("Plaintiff" or "DDD") is an Illinois non-profit corporation. Delta Delta Delta Fraternity ("DDD Fraternity") is a fraternal association which functions through DDD.

2. Defendant Theta Phi House Corporation is a Utah non-profit corporation (“Defendant” or “Theta Phi House Corp.”) formed to promote the objectives and purposes of the Delta Delta Delta Fraternity and to provide adequate housing facilities for University of Utah undergraduate students who are members of the Theta Phi Chapter of Delta Delta Delta Fraternity (“Theta Phi Chapter”).

3. DDD Fraternity issued a charter to Theta Phi Chapter on March 26, 1932.

4. Theta Phi House Corp. owns real property in Salt Lake County, State of Utah, located at 1431 East 100 South, Salt Lake City, Utah 84102-1802, more particularly described as:

W 15 FT OF LOT 49 ALL LOT 50 & E 10 FT OF LOT 51 BLK 3 FEDERAL HEIGHTS, according to the official plat thereof, recorded in the office of the county recorder of Salt Lake County, Utah (the “University of Utah house”).

5. DDD seeks relief from the Court declaring and ordering the dissolution of Theta Phi House Corp. and the conveyance of the University of Utah house to DDD in accordance with Theta Phi House Corp.’s articles of incorporation and bylaws.

6. This Court has jurisdiction over this matter pursuant to Utah Code Ann. § 78-3-4.

7. Venue is proper in this Court pursuant to Utah Code Ann. § 78-13-1, § 78-13-4 and § 78-13-7.

GENERAL ALLEGATIONS

8. Theta Phi House Corp. obtained its certificate of existence and was registered as a non-profit Utah corporation with the Utah Department of Commerce on June 5, 1928.

9. Theta Phi House Corp. exists pursuant to certain Articles of Incorporation and Bylaws that specify its rights and obligations, including certain obligations to DDD.

10. In early 2006, the Executive Board of DDD Fraternity determined that it was necessary and proper to withdraw the charter issued to Theta Phi Chapter effective April 30, 2006. The Theta Phi Chapter was inactivated effective April 30, 2006.

11. DDD has communicated this decision and action to Theta Phi House Corp. DDD also has requested that Theta Phi House Corp. convey title to the University of Utah house to DDD.

12. Conveyance of title to the University of Utah House to DDD is required upon dissolution of Theta Phi House Corp. under paragraph 9 of the Amendment to Affidavit of Incorporation dated April 8, 1992. (Copy attached hereto as Exhibit A.)

13. Conveyance of the title to the University of Utah House and all other property of Theta Phi House Corp. to DDD is also required upon inactivation of the chapter under Article VIII, Section 3 of the Bylaws of Theta Phi House Corp. dated January, 1999. (Copy attached hereto as Exhibit B.)

14. However, despite withdrawal of the charter of Theta Phi Chapter and the inactivation of the Theta Phi Chapter, Theta Phi House Corp. has refused to convey title to the property to DDD.

15. The Utah Department of Commerce has not received any application for articles of dissolution from Theta Phi House Corp. Moreover, Theta Phi House Corp. is in “active” standing but is “delinquent” in its renewal as of June 5, 2006. (A copy of the Utah Department of Commerce Business Entity status report is attached hereto as Exhibit C.)

FIRST CLAIM FOR RELIEF

(Specific Performance to Dissolve Theta Phi House Corporation)

16. DDD incorporates the allegations of paragraphs 1 through 15 above, as if fully set forth herein.

17. Upon the inactivation of the Theta Phi Chapter, Theta Phi House Corp. was and is obligated to deliver articles of dissolution with the State Department of Commerce, pursuant to its articles of incorporation and bylaws, and in conjunction with Utah Code Ann. §§ 16-10a-1403.

18. Theta Phi House Corp. should be ordered to specifically perform this obligation by delivering articles of dissolution to the Utah Department of Commerce and taking all other necessary steps to dissolve.

SECOND CLAIM FOR RELIEF

(Judicial Dissolution of Theta Phi House Corporation)

19. DDD incorporates the allegations of paragraphs 1 through 18 above, as if fully set forth herein.

20. Theta Phi House Corp. should be judicially dissolved pursuant to Utah Code Ann. §§ 16-10a-1430 and 16-10a-1431.

THIRD CLAIM FOR RELIEF

(Specific Performance to Convey University of Utah house)

21. DDD incorporates the allegations of paragraphs 1 through 20 above, as if fully set forth herein.

22. According to the articles of incorporation and bylaws of Theta Phi House Corp., upon dissolution of Theta Phi House Corp., the executive members of the Board of Directors for Theta Phi House Corp. become a self-perpetuating Board of Trustees which manages the affairs of the dissolved corporation.

23. Once dissolved, Theta Phi House Corp. may continue its corporate existence appropriate to the wind up of its business and liquidate its affairs including the disposing of its property, pursuant to Utah Code Ann. § 16-10a-1405(1).

24. According to Theta Phi House Corp.'s articles of incorporation and bylaws, Theta Phi House Corp. is obligated to convey title to the University of Utah house and all other property of Theta Phi House Corp. to DDD.

25. Theta Phi House Corp. should be ordered to specifically perform this obligation and convey all right, title and interest it has in the University of Utah house and all other property of Theta Phi House Corp. to DDD.

FOURTH CAUSE OF ACTION

(Declaratory Judgment)

26. DDD incorporates the allegations of paragraphs 1 through 25 above, as if fully set forth herein.

27. DDD is an entity whose rights, status, or other legal relations may be affected by a statute or contract. As such, DDD is entitled to have this Court determine questions of construction or validity of its claim to the University of Utah house and obtain a declaration of rights, status and other legal relationship, within the meaning of Utah Code Ann. § 78-33-2.

28. DDD is entitled to a declaration determining the respective interests of DDD and Theta Phi House Corp. in and to the University of Utah house and all other property of Theta Phi House Corp., pursuant to the articles and by-laws governing Theta Phi House Corp.'s incorporation and Utah Code Ann. §§ 16-10a-1403, 16-10a-1405, 16-10a-1430 and 16-10a-1431.

PRAYER FOR RELIEF

WHEREFORE, DDD prays for judgment against Theta Phi House Corporation as follows:

1. On the First Cause of Action, an order of this Court demanding specific performance of dissolution of the Theta Phi House Corp. in accordance with the bylaws and articles of incorporation.

2. On the Second Cause of Action, a judicial decree dissolving the Theta Phi House Corp. pursuant to Utah Code Ann. § 16-10a-1433.

3. On the Third Cause of Action, an order of this Court requiring that Theta Phi House Corp. convey title of the University of Utah house and all other property of Theta Phi House Corp. to DDD in accordance with the bylaws and articles of incorporation of Theta Phi House Corp., and pursuant to Utah Code Ann. § 16-10a-1405.

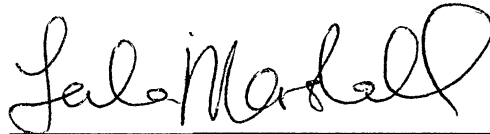
4. On the Fourth Cause of Action, a declaration and order of this Court determining the respective interests of DDD and Theta Phi House Corp. in and to the University of Utah house and all other property of Theta Phi House Corp.

5. For costs of suit and reasonable attorney's fees.

6. For such other and further relief as the Court deems just.

DATED this 27th day of July, 2006.

SNOW, CHRISTENSEN & MARTINEAU

A handwritten signature in black ink, appearing to read "Leilani C. Marshall", written over a horizontal line.

John R. Lund
Leilani C. Marshall
Attorneys for Plaintiff

EXHIBIT A

State of Utah
Department of Commerce
Division of Corporations and Commercial Code

I hereby certify that the foregoing has been filed
and approved on the 8th day of APRIL 1992
in the office of this Division and hereby issue
this Certificate thereof.

Examiner KAB Date 4-8-92



Gary R. Hansen
Gary R. Hansen
Division Director

RECEIVED

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RESOLUTION

At a meeting of the members of THETA PHI, INC held
in Salt Lake City, Utah ~~March 26~~ ^{February 6th}, 1992 by a unanimous vote
of all members entitled to vote, upon motion duly mad and seconded,
it is hereby

RESOLVED: That the Articles of Incorporation
of THETA PHI, INC., be amended as set forth in the
ammendment attached hereto and by reference made a
part hereof.

Dated this 8TH DAY OF APRIL 1992.

Judy E. Bell
Secretary (PRO-TEM)

2099010407

AMENDMENT

TO

AFFIDAVIT OF INCORPORATION

OF

THETA PHI HOUSE CORPORATION OF DELTA DELTA DELTA

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

I, Barbara Stone, do solemnly swear that at a meeting held in Salt Lake City, Utah, of the members of Theta Phi House Corporation of Delta Delta Delta, called for the purpose of considering amending its Affidavit of Incorporation in accordance with the statutes of the State of Utah, it was resolved by a majority of the members in attendance at said meeting to amend the Affidavit of Incorporation in the following manner:

1. The name of this corporation is Theta Phi House Corporation of Delta Delta Delta.
2. The duration of this corporation shall be perpetual.
3. The principal office and place of business of this corporation shall be in Salt Lake City, Utah.
4. The officers of this corporation shall consist of a board of five directors to be elected annually, as hereinafter specified. The Board of Directors at the first regular meeting following the annual meeting shall elect from their number a President, a Vice President, a Secretary and a Treasurer each to hold office for a period of one year and until her successor is elected and qualified. Three members of the Board of Directors shall constitute a quorum and shall be authorized to transact business for the corporation and exercise its corporate power. The directors shall be elected by ballot of the members.

5. The nominating committee shall prepare a slate of candidates for directors. The list shall be submitted to the Secretary and President at least three weeks prior to the annual meeting of the corporation, and notice of the candidates so nominated shall be made available to each member at least ten days prior to the annual meeting. Nominations in addition to those made by the nominating committee may be made from the floor at the annual meeting provided each nomination is seconded by at least two members.

If no nomination is made and duly seconded from the floor, the vote may be by voice or show of hands. If nominations, in addition to those made by the nominating committee, are made and duly seconded from the floor, each member shall vote by ballot, but no vote shall be counted toward the election of any candidate not properly nominated for the office. A candidate shall be deemed elected if she receives a majority of the votes properly cast.

6. The Board of Directors shall serve without bond, except the Treasurer shall post such bond as provided in the By-laws.

7. The following persons constitute the Board of Directors and shall serve until March 1, 1993 or until their successors are duly elected and qualified:

Barbara Stone, President and Director
Judy Bell, Vice President and Director, Interfraternity
Sue Lewon, Secretary and Director
Diane Davis, Treasurer and Director
Jody Olsen, Member at Large

3. The purposes for which this corporation is organized shall be social, civic and educational and particularly to benefit Theta Phi Chapter of Delta Delta Delta Fraternity, and to acquire and hold title to real estate and personal property and provide for the management and use thereof for the sole use and benefit of Theta Phi Chapter of Delta Delta Delta Fraternity, all in furtherance of the objects of Delta Delta Delta Fraternity which are:

To establish a perpetual bond of friendship among its members; to develop a stronger and more womanly character; to broaden the moral and intellectual life and, subject to limitations hereinafter contained, to assist its members in every possible way; to promote and develop mutually beneficial relationships between the fraternity and the colleges and universities where the fraternity has established chapters; to develop qualities of unselfish leadership among its members; and to encourage to assume, with integrity and devotion to moral and democratic principals, the highest responsibility of college women.

Anything herein contained which might be construed to the contrary notwithstanding: (1) No part of the income of this corporation shall be distributable to its members, directors or officers except as permitted by the Non-Profit Corporation Act of the State of Utah; (2) No member of the Fraternity or any member, director or officer of this corporation shall have any right, title or interest in or to any property of any kind owned by this corporation or used by it in connection with the performance of its functions nor in or to any income or other funds received by this corporation; (3) No part of the net earnings of this corporation shall enure to the benefit of any private member; (4) No substantial part of the activities of this corporation shall be carrying on propaganda or otherwise

attempting to influence legislation; and (5) This corporation shall not participate in, or intervene in any manner in any political campaign on behalf of any candidate for public office.

9. Upon the dissolution of this corporation and after its debts and obligations have been paid or provision made therefor, the remaining assets of this corporation, if any, shall be liquidated and the net proceeds, if any, of such liquidation shall be transferred to Delta Delta Delta, an Illinois Corporation to be held as part of its General Operating Funds.

10. The members of this corporation shall have the power to alter, repeal or amend these by-laws at any annual or special meeting provided notice of the proposed action be set forth in the notice of meeting. The Board of Directors shall have similar power, subject to the same requirements of notice, provided, however, that amendments by the Board of Directors shall be valid and continue in effect unless the members, at the next annual or special meeting of the members alter, modify, or rescind the action of the Board of Directors; and provided that notice of any amendment by the Board of Directors shall be made available to each member within ten days after such amendment and provided further that the Board of Directors shall not make or alter any by-laws fixing their number, qualifications or term of office.

Section 6 and 10 of Article III, Section 6 and 7 of Article IV, this Article VII and Article VIII of the by-laws shall not be amended without the prior written consent of the Executive Board of the Delta Delta Delta Fraternity. Copies of all amendments to these by-laws shall be sent to the Executive Office of Delta Delta Delta Fraternity as provided in the by-laws.

11. Members of this corporation shall be admitted as
provided in the by-laws.

Dated the 8th day of April, 1992.

Barbara Stone
Barbara Stone, President

Subscribed and sworn to, before me this 8th day of April, 1992.

Suzi Baxter
Notary Public

My commission expires 7-31-93

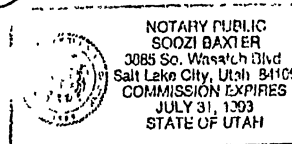


EXHIBIT B

These bylaws are intended as a guide for Delta Delta Delta house corporations in the various states. They may contain provisions that are inappropriate for particular jurisdictions or omit provisions required in particular jurisdictions. Accordingly, these bylaws should be reviewed by counsel in each of the states in which the house corporations are incorporated in order to ensure compliance with applicable state law.

Theta Phi
BYLAWS OF THE
(Greek name) HOUSE CORPORATION

OF DELTA DELTA DELTA

A (State) Corporation

PREAMBLE

These bylaws are subject to and governed by the laws of the State of Utah and the articles of incorporation of Theta Phi House Corporation of Delta Delta Delta (the "house corporation"), and the Bylaws of Delta Delta Delta Fraternity (the "Fraternity"). In the event of a direct conflict between the provisions of these bylaws and the mandatory provisions of the laws of the State of Utah or the provisions of the articles of incorporation of the house corporation, or the provisions of the Bylaws of the Fraternity, such provisions of the laws of the State of Utah or the articles of incorporation of the house corporation, or the Bylaws of the Fraternity, as the case may be, will be controlling.

ARTICLE I

NAME, OFFICE, PURPOSES

Section 1. Name. The name of this house corporation is Theta Phi (Greek name) House Corporation of Delta Delta Delta.

Section 2. Registered Office and Agent. This house corporation is incorporated under the laws of the State of Utah. The registered office and registered agent of the house corporation shall be as designated from time to time by the appropriate filing by the house corporation in the office of the Secretary of State of Utah.

Section 3. Purposes. The objectives and purposes for which the house corporation is formed are those set forth in its articles of incorporation.

ARTICLE II

MEMBERS, THEIR MEETINGS, NOTICES, QUORUM

Section 1. Members. The following shall be members of the house corporation:

- A. Alumnae of Theta Phi Chapter of Delta Delta Delta (the "chapter") who are members in good standing of the Fraternity.

- B. All undergraduate members of the chapter who are in good standing of the Fraternity.
- C. All members in good standing of the ^{Sigma Rho Chi} ~~Delta~~ Alumnae Chapter(s) of Delta Delta Delta (the "alumnae chapter") who are members in good standing of the Fraternity.
- D. Other alumnae members in good standing of the Fraternity whose written application for membership is accepted by the board of directors.

Section 2. Membership Book. The secretary shall keep a membership book (or card file) containing the name and address of each member. Termination of any membership shall be recorded in this book together with the effective date of termination. The membership book shall be conclusive as to which persons are members of the house corporation for purposes of (1) receiving notice of meetings, and (2) voting. All members shall be entitled to attend and vote at the annual and special meetings of the house corporation.

Section 3. Meetings.

- A. Annual Meetings. An annual meeting of the house corporation shall be held during each calendar year on such date and at such time during the chapter's school year as shall be designated from time to time by the board of directors and stated in the notice of the meeting. At such meeting, the members shall elect directors and transact such other business as may properly be brought before the meeting.
- B. Special Meetings. A special meeting of the house corporation may be called at any time by the president, the board of directors, or if requested by writing setting forth the purpose of the proposed meeting and signed by at least ten members of the house corporation. Only business within the purpose or purposes described in the notice of special meeting may be conducted at such special meeting.
- C. Place of Meetings. All annual and special meetings of the house corporation shall be held at the chapter house or rooms of the chapter unless another place is designated by the board of directors.
- D. Notice. Except as otherwise provided by law, written or printed notice stating the place, day, and hour of each annual or special meeting of the house corporation and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting by or at the direction of the president, the secretary, or the person calling the meeting, to each alumna member of record and to the chapter. Notice in THE TRIDENT may be used to comply with this notice requirement. Notice by mail shall be sent to the members' last known addresses and shall be deemed delivered when deposited in the U.S. mails with prepaid postage.

Section 4. Quorum; Withdrawal of Quorum. A quorum shall be present at a meeting of the house corporation if 10 members are present, except as otherwise provided by State law or the articles of incorporation. Once a quorum is present at a meeting of the house corporation, the members present at the meeting may conduct such business as may be properly brought before the meeting until it is adjourned, and the subsequent withdrawal from the meeting of any member or the refusal of any member present to vote shall not affect the presence of a quorum at the meeting.

Section 5. Two-thirds Vote. Except as otherwise provided by law, the articles of incorporation, or these bylaws, with respect to any matter, the affirmative vote of two thirds of members present at a meeting at which a quorum is present shall be the act of the house corporation. The directors of the house corporation shall be elected as provided in Article III of these bylaws. No member shall be entitled to vote by proxy.

Section 6. Officers' Duties at Meetings. The president shall preside at, and the secretary shall prepare minutes of, each meeting of the house corporation. In the absence of the secretary, her duties shall be performed by some person or persons elected by the vote of a majority of the members present at such meeting.

ARTICLE III

DIRECTORS

Section 1. Number; Term; Election; Qualification. The number of directors which shall constitute the board of directors shall be 5. At each annual meeting of the house corporation, directors shall be elected to hold office for one year until the next annual meeting of the house corporation and until their successors are elected and qualified. Any director may be re-elected without limit as to number of terms. All directors must be members of the house corporation. All members are eligible for election to office of director; provided, however, the majority of directors shall be alumnae members.

Section 2. Removal. Except as otherwise provided by law, at any meeting of the house corporation called expressly for that purpose, any director or the entire board of directors may be removed, with or without cause, by a vote of two thirds of the members present at the meeting.

Section 3. Vacancies. Any vacancy occurring on the board of directors may be filled by (i) the members at any annual or special meeting of members called for that purpose or (ii) the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve for the unexpired term of her predecessor in office.

Section 4. Meetings.

- A. First Meeting. Each newly elected board of directors may hold its first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after and at the same place as the annual meeting of the house corporation, and notice of such meeting shall not be necessary.
- B. Place of Meetings. The board of directors shall hold its meetings in the chapter house or facility. All board of directors' meetings shall be held at a time and place convenient for attendance by the undergraduate members of the house corporation.
- C. Regular Meetings. The board of directors shall meet at least once per calendar quarter. Regular meetings of the board of directors may be held without notice at such times and places as may be designated from time to time by resolution of the board of directors and communicated to all directors.
- D. Special Meetings; Notice. Special meetings of the board of directors shall be held whenever called by the president or by any director. The person calling any special meeting shall cause notice of such special meeting, including therein the time and place of such special meeting, to be given to each director at least two days before such special meeting, but this requirement may be waived by instruments in writing signed by all of the directors, or by the presence of all the directors at a meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of the board of directors need be specified in the notice or waiver of notice of any special meeting.

- E. Notice to Other Members. Notice of each meeting of the board of directors, whether regular or special, even if notice thereof has been waived by all the directors, shall be sent to the president of the alumnae chapter(s), the alumna adviser, financial adviser, president, treasurer, and house manager (suite or room chairman), and any other appropriate officers of the chapter. The foregoing persons shall be entitled to attend all board meetings, but they shall not be entitled to vote unless they are also duly qualified members of the board of directors.

Section 5. Quorum; Voting.

- A. Quorum. At all meetings of the board of directors, a majority of the number of directors fixed in the manner provided in these bylaws shall constitute a quorum for the transaction of business. If a quorum is not present at a meeting, a majority of the directors present may adjourn the meeting without notice other than an announcement at the meeting, until a quorum is present.
- B. Majority Vote. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall be the act of the board of directors, unless the act of a greater number is required by law, the articles of incorporation, or these bylaws.
- C. Presumption of Assent. A director of the house corporation who is present at any meeting of the board of directors at which action on any matter is taken shall be presumed to have assented to the action unless her dissent shall be entered in the minutes of the meeting or unless she shall file her written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall forward any dissent by certified or registered mail to the secretary of the house corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 6. Procedure; Minutes. At meetings of the board of directors, business shall be transacted in such order as the board of directors may determine from time to time. The secretary will prepare the minutes of each meeting. In her absence the board of directors shall appoint a person to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting which shall be delivered to the secretary of the house corporation for placement in the minute books of the house corporation.

Section 7. Compensation of Directors and Officers. No individual members of the house corporation shall receive any remuneration for any act or services done as a director, officer, or otherwise for or on behalf of the house corporation, but this provision shall not exclude the reimbursement of individual members for reasonable expenses incurred in or performing the business and affairs of the house corporation and approved by the board of directors.

ARTICLE IV

MANAGEMENT OF CORPORATE AFFAIRS

Section 1. Management. The powers of the house corporation shall be exercised by or under the authority of, and the business and affairs of the house corporation shall be managed under the direction of, the board of directors.

Section 2. Requirements of Fraternity Approval for Certain Actions. Before undertaking the rental, lease, purchase, building, remodeling or improvement of any premises for chapter meeting or living, the

house corporation shall obtain written approval of the Executive Board of the Fraternity (the "Executive Board"). If any such action is proposed, the house corporation shall submit such materials and information deemed necessary or appropriate by the Executive Board for its decision, including, without limitation, the proposed method of financing and, if applicable, a qualified architect's preliminary sketches of the proposed work. Written approval of the Executive Board shall also be required for any refinancing of existing indebtedness, rental of chapter premises to non-members, summer rental to members or non-members, and projects involving a total expenditure in excess of \$10,000. Further, the house corporation shall obtain the written consent of the Finance Director of the Fraternity prior to commencing any fund-raising activities, and all such activities will be conducted under the Finance Director's supervision.

ARTICLE V

OFFICERS

Section 1. Number; Titles; Election; Term; Qualification. The officers of the house corporation shall be a president, a vice president, a secretary, and a treasurer, and shall be elected from the members of the board of directors except that the president and treasurer must be alumna members. The board of directors shall elect such officers at its first meeting at which a quorum shall be present after the annual meeting of the house corporation or whenever a vacancy exists. The board of directors then, or from time to time, may also elect or appoint one or more other officers or agents (which need not be members of the board of directors) as it shall deem advisable. Each officer and agent shall hold office for a period of one year and until her successor has been elected or appointed and qualified. Any person may hold any number of offices except that the offices of president and secretary may not be held by the same person. Any officer may be re-elected to the same office, or elected to some other office, but in no event shall any member hold the same office for more than three consecutive years.

Section 2. Removal. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgement the best interests of the house corporation will be served thereby.

Section 3. Vacancies. Any vacancy occurring in any office of the house corporation may be filled by the board of directors at a meeting thereof, and the officer so selected shall serve for the unexpired term of her predecessor in office.

Section 4. Authority. Officers shall have such authority and perform such duties in the management of the house corporation as are provided in these bylaws or as may be determined by resolution of the board of directors not inconsistent with these bylaws.

- A. President. The president shall preside at all meetings of the house corporation and of the board of directors. She shall have general and active management of the affairs of the house corporation in the ordinary course of its business and shall be responsible for the proper execution of all orders and resolutions of the board of directors. Generally, the president shall perform all the duties usually incident to such office or that may be required of her by the board of directors or by other provisions of these bylaws.
- B. Vice President. The vice president shall have such powers and duties as may be prescribed by the board of directors or as may be delegated from time to time by the president and shall exercise the powers of the president during that officer's absence or inability to act. The vice president shall be a member of the Fund Raising Committee and act as its chairman.

- C. Treasurer. The treasurer shall have custody of the house corporation's funds and securities, shall keep full and accurate accounts of receipts and disbursements, and shall deposit all moneys and valuable effects in the name and to the credit of the house corporation in such depository or depositories as may be designated by the board of directors. The treasurer shall give bond (the cost of which shall be paid by the house corporation) under the blanket bond maintained by the Fraternity in such amounts as the board of directors shall from time to time require. The treasurer shall audit all payrolls and vouchers of the house corporation, receive, audit, and consolidate all operating and financial statements of the house corporation, shall supervise the accounting and auditing practices of the house corporation, and shall have charge of matters relating to taxation. Additionally, the treasurer shall have the power, together with such other officer or officers designated by the board of directors, to endorse for deposit, collection, or otherwise all checks, drafts, notes, bills of exchange, and other commercial paper payable to the house corporation and to give proper receipts and discharges for all payments to the house corporation. She shall have the right, together with such other officer or officers designated by the board of directors, to countersign all checks, drafts, notes, or orders for the payment of money. The treasurer shall perform such other duties as may be prescribed by the board of directors or as may be delegated from time to time by the president.
- D. Secretary. The secretary shall maintain minutes of all meetings of the board of directors, of any committee, and of the house corporation in the house corporation's minute books, and shall cause notice of such meetings to be given when requested by any person authorized to call such meetings. The secretary may sign with the president, in the name of the house corporation, all contracts of the house corporation and affix the seal of the house corporation thereto. The secretary shall have charge of the minute books, the corporate seal and the membership book, all of which shall at all reasonable times be open to inspection by any member. The secretary shall perform such other duties as may be prescribed by the board of directors or as may be delegated from time to time by the president.

Section 5. Records and Documents to be Filed with Executive Office.

- A. By the Secretary. The secretary shall send to the Executive Office of the Fraternity two copies of the following documents within 15 days after her receipt thereof:
- (1) articles of incorporation;
 - (2) approved and adopted bylaws of the house corporation, and of all amendments or changes thereto;
 - (3) minutes of each annual and special meeting of the house corporation; and
 - (4) list of corporate officers after each annual election.
- B. By the Treasurer. The treasurer shall send to the Executive Office of the Fraternity two copies of the following documents within 15 days after her receipt thereof:
- (1) an annual report prepared by a firm of Certified Public Accountants designated or approved by the Finance Director of the Fraternity;
 - (2) a copy of the annual IRS 990 information form (which shall have been prepared by a tax professional if the house corporation has gross receipts in excess of \$25,000 annually);
 - (3) a copy of the annual or periodic report, if required, to maintain tax-exempt status in the state of incorporation; and
 - (4) an annual financial summary which shall be submitted by June 1 of each year.

ARTICLE VI

BOARD ELECTIONS

Section 1. Nominations. The Nominating Committee (see Article VII, Section 8 C.) shall prepare a slate of candidates for directors. This list shall be submitted to the secretary and president at least three weeks prior to the annual meeting of the house corporation, and notice of the candidates shall be given each member at least ten days prior to the annual meeting. Nominations may be made from the floor at the annual meeting provided each nomination is seconded by at least two members.

Section 2. Vote. If no nomination is made and duly seconded from the floor, the vote may be by voice or show of hands. If nominations are made and duly seconded from the floor, the vote shall be by ballot, but no vote shall be counted toward the election of any candidate not properly nominated for the office. A candidate shall be deemed elected if she received a majority of the votes properly cast.

Section 3. Proxies. Except as otherwise required by law, proxy voting will not be permitted.

ARTICLE VII

COMMITTEES

Section 1. Designation. The board of directors, by resolution adopted by a majority of the entire board of directors, may designate one or more committees.

Section 2. Number; Qualification; Term. The board of directors, by resolution adopted by a majority of the entire board of directors, may designate one or more of its members as members of any committee and may designate one or more of its members as alternate members of any committee, who may, subject to any limitations imposed by the board of directors, replace absent or disqualified members at any meeting of that committee. The number of committee members may be increased or decreased from time to time by resolution adopted by a majority of the entire board of directors. Each committee member shall serve as such until the earliest of (i) the expiration of her term as director, (ii) her resignation as a committee member or as a director, or (iii) her removal, as a committee member or as a director.

Section 3. Authority. Each committee, to the extent expressly provided in the resolution establishing such committee, and except as limited by law, shall have and may exercise the authority of the board of directors.

Section 4. Committee Changes. The board of directors shall have the power at any time to fill vacancies in, to change the membership of, and to discharge any committee.

Section 5. Meetings.

A. Regular Meetings. Regular meetings of any committee may be held without notice at such time and place as may be designated from time to time by the committee and communicated to all members thereof.

B. Special Meetings. Special meetings of any committee may be held whenever called by any committee member. The committee member calling any special meeting shall cause notice of such special meeting, including therein the time and place of such special meeting, to be given to each committee member at least two days before such special meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of any committee need be specified in the notice or waiver of notice of any special meeting.

Section 6. Quorum; Majority Vote. At meetings of any committee, a majority of the number of members designated by the board of directors shall constitute a quorum for the transaction of business. If a quorum is not present at a meeting of any committee, a majority of the members present may adjourn the meeting without notice other than an announcement at the meeting, until a quorum is present. The act of a majority of the members present at any meeting at which a quorum is in attendance shall be the act of a committee, unless the act of a greater number is required by law, the articles of incorporation, or these bylaws.

Section 7. Minutes. Each committee shall cause minutes of its proceedings to be prepared and shall report the same to the board of directors upon the request of the board of directors. The minutes of the proceedings of each committee shall be delivered to the secretary of the house corporation for placement in the minute books of the house corporation.

Section 8. Standing Committees. Without limiting the board of directors' power of designation as set forth in Article VII, Section 1, the following shall be standing committees of the house corporation:

- A. Furnishing Committee. The Furnishing Committee shall be responsible for supervising the furnishing and decorating of the chapter house or rooms of the chapter in accordance with the needs of the collegiate members, subject to budget limitations. The vice president of the house corporation shall be a member of this committee and act as its chairman. The president and the house manager (suite or room chairman) of the chapter shall be invited to each meeting.
- B. Finance Committee. The Finance Committee shall be responsible for preparing annual budgets for, and inspecting the financial records of, the house corporation. The treasurer of the house corporation shall be a member of this committee and act as its chairman. The treasurer and financial adviser of the chapter shall be invited to each meeting.
- C. Nominating Committee. The Nominating Committee shall be responsible for preparing a slate of candidates for house corporation office, in accordance with the provisions of these bylaws. The Nominating Committee shall consist of 3 members, 2 of whom shall be alumnae and 1 of whom shall be collegians.

ARTICLE VIII

HOUSE CORPORATION PROPERTY

Section 1. Property Rights. No member or pledge-member of the Fraternity, nor any member, director, or officer of the house corporation shall have any right, title or interest in or to any property of any kind owned by the house corporation or used by it in connection with the performance of its functions, nor in or to any income or other funds received by it, and no part of the net earnings of the house corporation shall inure to the benefit of any member.

Section 2. No Transfer of Property. The house corporation may not sell, lease, mortgage or otherwise dispose of any substantial portion of its assets (including, without limitation, a chapter house, apartment, or other premises for chapter meetings or living) without the prior written approval of the Executive Board.

Section 3. Distribution of Property upon Dissolution. Upon inactivation of the chapter, the house corporation shall be dissolved and all right, title, and interest in and to any assets held or owned by the house corporation or used by it in connection with the performance of its functions automatically shall revert to and become vested in Delta Delta Delta, an Illinois not-for-profit corporation, and shall be dealt with by that Delta Delta Delta Corporation and the Fraternity in the manner provided for in the respective bylaws of those bodies.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 1. Books and Records. The house corporation shall keep books and records of account and shall keep minutes of the proceedings of the house corporation, the board of directors, and each committee of the board of directors.

Section 2. Fiscal Year. The fiscal year of the house corporation shall be fixed by the board of directors; provided, that if such fiscal year is not fixed by the board of directors and the board of directors does not defer its determination of the fiscal year, the fiscal year shall be July 1 to June 30.

Section 3. Seal. The seal of the house corporation shall be in such form as may be approved from time to time by the board of directors and shall consist of two concentric circles between which shall be inscribed the year of its incorporation and the words "Corporate Seal, (^{Theta Phi} Greek letter name)". The affixation of such seal shall not be required to create a valid and binding obligation of the house corporation.

Section 4. Attestation by the Secretary. With respect to any deed, deed of trust, mortgage, or other instrument executed by the house corporation through its duly authorized officer or officers and approved by the Executive Board, the attestation to such execution by the secretary of the house corporation shall not be necessary to constitute such deed, deed of trust, mortgage, or other instrument a valid and binding obligation against the house corporation unless the resolutions, if any, of the board of directors authorizing such execution expressly state that such attestation is necessary.

Section 5. Resignation. Any director, committee member, officer, or agent may resign by so stating at any meeting of the board of directors or by giving written notice to the board of directors, the president, or the secretary. Such resignation shall take effect at the time specified in the statement made at the board of directors' meeting or in the written notice, but in no event may the effective time of such resignation be prior to the time such statement is made or such notice is given. If no effective time is specified in the resignation, the resignation shall be effective immediately. Unless a resignation specifies otherwise, it shall be effective without being accepted.

Section 6. Invalid Provisions. If any part of these bylaws is held invalid or inoperative for any reason, the remaining parts, so far as is possible and reasonable, shall remain valid and operative.

Section 7. Headings. The headings used in these bylaws are for convenience only and do not constitute matter to be construed in the interpretation of these bylaws.

ARTICLE X

AMENDMENTS

Section 1. Amendments. The members of the house corporation shall have the power to alter, repeal, or amend these bylaws at any annual or special meeting provided notice of the proposed action is set forth in the notice of meeting. The board of directors shall have similar power, subject to the same requirements of notice; provided, however, that amendments by the board of directors shall be valid and continue in effect unless the members, at the next annual or special meeting of the members, alter, modify, or rescind the action of the board of directors; and provided further that notice of any amendment by the board of directors shall be given to each member in writing at the next annual meeting for ratification or other action; and provided further that the board of directors shall not make or alter any bylaws fixing their number, qualifications, or term of office.

Section 2. Limitations on Amendments. Article III, Section 7, Article IV, Section 2, Article VII, Sections 6 and 8, and Articles VIII and X of these bylaws shall not be amended without the prior written consent of the Executive Board.

The undersigned, the secretary of the house corporation, hereby certifies that the foregoing bylaws were adopted by the board of directors of the house corporation as of January 1991.

Judith C. Peterson (signed)

Secretary, (Greek name) House Corporation

Theta Phi

EXHIBIT C

1. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

2. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

3. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

4. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

5. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

6. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

7. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

8. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

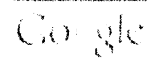
9. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

10. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

11. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

12. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

13. The following information is provided for the purpose of illustrating the format of the exhibit. It is not intended to be a representation of the actual data.

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Commerce

Business Entity Search

[Help](#)

Name	Type	City	Status
THETA PHI HOUSE CORP OF DELTA DELTA DELTA	Corporation	SALT LAKE CITY	Active
Business Name:	THETA PHI HOUSE CORP OF DELTA DELTA DELTA		
Entity Number:	556898-0140		
Registration Date:	06/05/1928		
State of Origin:	UT		

Address

5998 SOUTH 1430 EAST
SALT LAKE CITY, UT 84121

Status

Status:	Active
Status Description:	Good Standing
This Status Date:	08/23/2004
Last Renewed:	06/06/2005
License Type:	Corporation - Domestic - Non-Profit
Delinquent Date:	06/05/2006

Registered Agent

Registered Agent:	ALISON NEESE [Search BES] [Search RPS]
Address Line 1:	5998 SOUTH 1430 EAST
Address Line 2:	
City:	SALT LAKE CITY
State:	UT
Zip:	84121

Additional Information

Additional Principals:	N
NAICS Code:	9999
NAICS Title:	9999-Nonclassifiable Establishment
Stock Class 1 Amount:	0000000000
Stock Class 2 Amount:	0000000000

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[Access Principal Information](#)

If you would like to receive information on the principal individuals associ entity, click the button on the left. You will be assessed a **\$ 1.00 fee** for th information.

[Back to search results](#)[Do Another Search](#)

COVER SHEET FOR CIVIL FILING ACTIONS - Page 1

Party Identification (Attach additional sheets as necessary)

PLAINTIFF PETITIONER

Name Delta Delta Delta

Address

Phone Number

PLAINTIFF PETITIONER

Name

Address

Phone Number

DEFENDANT/RESPONDENT

Name Theta Phi House Corp. of

Address Delta Delta Delta

Phone Number

DEFENDANT/RESPONDENT

Name

Address

Phone Number

TOTAL CLAIM FOR DAMAGES

\$ _____

ATTY FOR PLAINTIFF PETITIONER

Name John R. Lund (4368)

Address Leilani C. Marshall (9662)
Snow Christensen & Martineau
10 Exchange Place, Eleventh Floor

Phone Number P.O. Box 45000
SLC, UT 84145-5000
521-9000

ATTY FOR PLAINTIFF PETITIONER

Name

Address

Phone Number

ATTY FOR DEFENDANT/RESPONDENT

Name

Address

Phone Number

ATTY FOR DEFENDANT/RESPONDENT

Name

Address

Phone Number

JURY DEMAND

☐ Yes

☒ No

SCHEDULE OF FEES: §78-7-35. CHECK ANY THAT APPLY.

(See Case Types for Filing Fees for Complaints other than Claim for Damages.)

---- COMPLAINT FOR DAMAGES ----

\$50 ☐ Civil or Interpleader: \$2000 or less

\$95 ☐ Civil or Interpleader: \$2001 - \$9999

\$155 ☐ Civil or Interpleader: \$10,000 and over

\$155 ☒ Civil Unspecified

----- SMALL CLAIMS -----

\$45 ☐ Small Claims: \$2000 or less

\$70 ☐ Small Claims: \$2001-\$7500

----- MISCELLANEOUS -----

\$75 ☐ Jury Demand

\$2 ☐ Vital Statistics §26-2-25
per form

AUG 25 2006

SALT LAKE COUNTY

by _____ Deputy Clerk *kn*

Fadel Associates
George K. Fadel #1027
Attorneys for Defendant
170 West 400 South
Bountiful, Utah 84010
(801) 295-2421

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

DELTA DELTA DELTA, an Illinois non-)
profit corporation,)

Plaintiff,)

THETA PHI HOUSE CORPORATION
OF DELTA DELTA DELTA, a Utah non-)
profit corporation,)

Defendant.)

ANSWER AND COUNTERCLAIM

Case No. 060912357

Judge: Quinn

The defendant answers the complaint by paragraph numbers as follows:

FIRST DEFENSE

1. Paragraph 1 is denied for want of information and belief.
2. Denied. There was an unlawful attempt by an amendment on April 4, 1992, to amend the original articles of incorporation of Theta Phi, Inc., endeavoring to change its name to Theta Phi House Corporation of Delta Delta Delta. The purported amendment did not comply with Section 16-6-50 Utah Code Annotated as the statute existed in 1992, and the provisions of Section 16-6a-1005, L. 2000.

On June 5, 1928, the defendant was incorporated as Delta Epsilon, Inc. to exist for a term of fifty years and was organized for purposes of acquiring, holding and using property for social

pleasure and convenience of its members.

An amendment, July 7, 1961, changed the defendant's name to Theta Phi House Corporation.of Delta Delta Delta, and made the duration of the corporation perpetual. It also stated a purpose of the corporation to be "To establish a perpetual bond of friendship among its members. . . ."

The purported amendment is invalid.

3. Denied.

4. Denied. The real property at 1431 East 100 South Salt Lake City, Utah is owned by Delta Epsilon, Inc., as may be affected by a conveyance to Theta Phi House Corporation of Delta Delta Delta.

5. Denied.

6. Admitted.

7. Admitted.

8. Denied. Delta Epsilon, Inc. was incorporated on June 5, 1928. Theta Phi House Corporation did not exist and does not exist, because the amendment purporting to change the name is invalid.

9. Denied.

10. Admitted that the withdrawal action was unilaterally taken without due process and such action is invalid, and in any event is not relevant to the continued existence of Delta Epsilon, Inc.

11. Admitted.

12. Denied.

13. Denied.

14. It is admitted that the Theta Phi House Corp. has refused to convey title to DDD and the remainder is denied.

15. Admitted except as to delinquency.

16. Answered as above.

17. Denied.

18. Denied.

19. Answered as above.

20. Denied.

21. Answered as above.

22. Denied.

23. Admitted that the code permits such action of a dissolved corporation but denies its applicability to the defendant by any name.

24. Denied.

25. Denied.

26. Answered as above.

27. Denied.

28. Denied. DDD is not a person interested under a deed, will, or written contract who qualifies for declaratory judgment under Section 78-33-2. No such deed, will or written contract exists.

The prayer for relief is denied.

SECOND DEFENSE

The bylaws claimed by DDD to qualify DDD to a reversion are not a contract to which DDD is a party. Corporate bylaws affect only its members, directors and officers. The right of a third person to establish a claims through a bylaw must necessarily depend upon general principals applicable to express contracts. 18A AmJur2d Section 326 at page 237.

THIRD DEFENSE

Even assuming that a bylaw of the defendant (by any other name) purported to grant some rights to DDD upon dissolution, DDD has no right to compel or accomplish dissolution. The alleged amendment, Exhibit A, paragraph 9 only refers to “Upon dissolution” and contains no right of DDD to compel or accomplish a dissolution.

Exhibit B, attached to the complaint, purporting to be bylaws of Theta Phi House Corporation of Delta Delta Delta if otherwise were lawfully created, are dated “January 1991,” whereas the articles of amendment purporting to change the name to Theta Phi House Corporation of Delta Delta Delta is dated April 8, 1992, some fifteen months after January 1991. The said “January 1991” bylaws are therefore of no effect in referencing a non-existent corporation. The resolution attached to Exhibit B refers to members of Theta Phi, Inc. as voting upon the 1992 amendment.

Even assuming the 1991 bylaws to be valid, the provisions of Article VIII Section 3, relating to distribution upon dissolution confer no right upon DDD to compel dissolution or distribution. Nothing in the bylaws defines “inactivation of the chapter.” Article II Section I constitutes members of the “house corporation” as being Alumnae of Theta Phi Chapter of Delta Delta Delta (the “chapter”) and members in good standing of the “chapter.”

Thus, the chapter is a separate unincorporated association and is not the nonprofit

corporation, and the inactivation of the chapter has no relationship to continued existence of the corporation which would be free to associate with a different chapter during its “perpetual” duration specified in the articles.

FOURTH DEFENSE

Because all Alumnae are members, no default or noncompliance by non-alumnae members can be attributed to the corporation. If DDD could unilaterally inactivate the chapter by default of current occupants, the inactivation of the chapter does not create any basis for dissolution of the corporation.

FIFTH DEFENSE

The bylaw provision relating to dissolution recites that assets of the house corporation “automatically shall revert to and become vested in Delta Delta Delta.” Reversion requires that the party claiming reversion had title, and as grantor, is entitled to regain title pursuant to some valid provision for reversion. The real property has always been owned by the Utah nonprofit corporation and the plaintiff has never owned or invested therein or any other assets of the Utah corporation. There can be no conveyance of land in Utah except by documents substantially in the form a of Warranty Deed, Section 57-1-12 UCA or a Quitclaim deed, Section 57-1-13.

The Utah Statute of Frauds, Section 25-5-1 provides:

No estate or interest in real property, other than leases for a term not exceeding one year, nor any trust or power over or concerning real property or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

No such deed or conveyance in writing subscribed by an authorized party exists.

SIXTH DEFENSE

The alleged provisions of the articles and/or bylaws under which plaintiff claims entitlement are invalid for reasons stated above as well as being violations of the rule against perpetuities. The rule provides that a future interest must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest. Assuming that the plaintiff had a claim to a created interest by documents in 1991 and 1992, nothing in the articles or bylaws indicate that the interest “must vest” within the lifetimes of designated persons or within 21 years thereafter.

The defendant nonprofit corporation has perpetual existence as stated in its articles. The provision in the articles relied upon by plaintiff refers only to “upon dissolution,” which as to the defendant corporations perpetual existence clearly shows that any claim by plaintiff does not meet the test of “must vest” within lives in being or within 21 years thereafter. Nor does the bylaw Article VIII Section 3 utilizing the words “upon inactivation of the chapter” pass the test since there is no indication that the parties intended the occurrence of inactivation within the lives of chapter members in being or within 21 years thereafter. The original corporation, Delta Epsilon, Inc. was incorporated in 1928, some 78 years ago, and the articles of amendment in 1992 continued its existence in perpetuity. The claim of plaintiff is invalid as a violation of the rule against perpetuities.

SEVENTH DEFENSE

The action taken by the plaintiff to deactivate the “chapter” is without basis or reason, was arbitrary, capricious, and an abuse of due process of law as well as violating Section 16-16a-1014.

EIGHTH DEFENSE

Dissolution of the defendant can only be accomplished by its directors and members (Section 16-16a-1415 UCA) or by judicial dissolution in a proceeding by the attorney general (Sections 16-6a-1414, 16-6a-1415. Plaintiff has no investment in Utah and has suffered no loss in the chapter closing it created. Plaintiff has no legal, equitable or moral claims to defendant's assets and is an unwanted beneficiary.

NINTH DEFENSE

The plaintiff's claim is barred by the lack and failure of consideration, and no contractual relationship existed or exists to support the plaintiff's claim.

Wherefore, defendant prays that the complaint be dismissed.

COUNTERCLAIM

Further answering the complaint and by way of counterclaim, the defendant alleges:

1. The defendant, under its proven present name, is the owner of the real property at 1431 East 100 South, Salt Lake City, Utah.
2. The plaintiff has collected and withheld rents due the counterclaimant which were paid to plaintiff by chapter members and were to be paid over to the defendant. The amount withheld by the plaintiff and owed to the defendant for rent collected is \$8,080.00.
3. The action taken by the plaintiff in causing the inactivation of the Theta Phi Chapter was without right and an intentional interference with the contractual and social relationship of the defendant with the Chapter for which defendant counterclaimant is entitled to damages as proved at trial.

Wherefore defendant-counterclaimant prays that the complaint be dismissed with

prejudice and demands judgment against the plaintiff upon this counterclaim as follows:

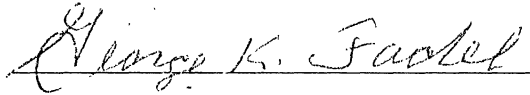
1. \$8,080.00 for money owed to defendant.
2. A sum to be proved at trial for intentional interference by plaintiff with defendants contractual relationship with the Chapter.
3. For costs, and other relief as may be equitable in the cause.

Dated this 24th day of August, 2006.


Attorney for Defendant-Counterclaimant

Certificate of Mailing

I certify I mailed a copy of the foregoing Answer and Counterclaim to John R. Lund and Leilani C Marshall, attorneys for the plaintiff, Snow, Christensen & Martineau, 10 Exchange Place, Eleventh Floor, P. O. Box 45000, Salt Lake City, Utah 84145, this 24th day of August, 2006.



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-1-

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

DELTA DELTA DELTA,
Plaintiff,
vs.
THETA PHI HOUSE CORP
OF DELTA,
Defendant.

ORIGINAL

Case No. 060912357 PR

FILED DISTRICT COURT
Third Judicial District

DEC - 4 2007

Hearing
Electronically Recorded on
November 20, 2007

By BM SALT LAKE COUNTY
Deputy Clerk

BEFORE: THE HONORABLE ANTHONY B. QUINN
Third District Court Judge

APPEARANCES

For the Plaintiff: John R. Lund
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Transcribed by: Beverly Lowe, CSR/CCT

1909 South Washington Avenue
Provo, Utah 84606
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FILED
UTAH APPELLATE COURTS

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P R O C E E D I N G S

(Electronically recorded on November 20, 2007)

THE COURT: Let's go on the record in the matter of Delta Delta Delta vs. Theta Phi House Corporation of Delta. Let's have you state your appearances for the record, please.

MR. LUND: Your Honor, John Lund and Leilani Marshall for Delta Delta Delta.

MR. MANSFIELD: Your Honor, Robert Mansfield on behalf of the defendant Theta Phi Corporation.

THE COURT: Thank you. We're here today on a number of motions. We have cross motions for summary judgment. We also have the defense motion to strike the plaintiff's motion for summary judgment, which I'm going to decline. These motions have been briefed by both sides; and I think that it makes sense to consider them both, notwithstanding the question of timeliness of the plaintiff's motion.

The effect of striking this would simply be if I denied your motion for summary judgment, Mr. Mansfield, would put the parties through the expense of a trial, which may in fact not be necessary. If I were likely to grant the plaintiff's motion for summary judgment, I just don't think that's really in anybody's interest for me to do that. So I'm going to consider the cross motions for summary judgment.

Consistent with my usual policy, I'm going to tell you what I think about the case, and give you a chance to respond.

1 I've read everything that's been filed with respect to these
2 two motions, and I've developed some tentative views that I'm
3 going to share with you at this time. My tentative view would
4 be to grant plaintiff's motion for summary judgment, and to
5 deny the defendant's motion for summary judgment.

6 The way that I reach that is in viewing this whole
7 circumstance, I think that you have to consider the bylaws
8 of the local house corporation in context. That context is
9 the tripartite relationship that exists between the national
10 fraternity, the local chapter, and the house corporation. I
11 don't think that you can view the circumstances of this case
12 in any other way.

13 The house corporation really only exists because
14 it's the policy of the national organization to require its
15 existence. So you have to look at what are the mutual
16 obligations of the various parties to this relationship.

17 The national organization has bylaws that contemplate
18 that when local chapters are organized, that the local chapters
19 will be organized as non-profit corporations; and that to the
20 extent that they hold real estate, that real estate would be
21 held by local house corporations. Those are -- that provision
22 is found in the very bylaws of the national corporation.

23 When this chapter affiliated with the national
24 organization, it did so pursuant to the policies that were
25 in place, and required by the national organization. Those

1 policies include, to the extent that there is going to be
2 real property held, that it would be held by a local house
3 corporation.

4 So ultimately you have a situation here where the
5 local seeks affiliation with the national. The national
6 agrees to accept the local as a chapter, and agrees to provide
7 various services and support of the local, and part of that
8 tripartite relationship is that the local is going to be
9 organized pursuant to the policies imposed by the national,
10 including that the real property will be held by a house
11 corporation, and that house corporation will be a non-profit
12 corporation, and that the articles of incorporation and the
13 bylaws of the house corporation will require that if for any
14 reason the local is dechartered, that land that is being held
15 by the house corporation reverts to the national. That is the
16 uniform policy of the national, and those are the circumstances
17 under which the local agreed to be affiliated with the national

18 So based upon my analysis of that tripartite
19 relationship, there's really no question at all that there's
20 consideration to support the obligation and the bylaws; and in
21 the affidavit of incorporation, to require reversion of this
22 real property to the national.

23 Even if there were not, I would be persuaded by the
24 idea that the national is an intended third-party beneficiary
25 of the contractual obligations that are inherent in the bylaws

1 and in the articles of incorporation, and would be enforceable
2 by the national, even in the absence of consideration flowing
3 from the national to the local, because, as I my understanding
4 is, an intended third party beneficiary promise is enforceable
5 regardless of whether or not there's consideration, as long as
6 there's consideration between the principle parties of the
7 contract.

8 So anyway, that's my tentative view, Mr. Mansfield.
9 I'll give you a chance to explain to me what I'm missing.

10 MR. MANSFIELD: Certainly, Judge. With your Honor's
11 preliminary comments in mind, first, your Honor, I think you
12 need to look at the claims asserted by the plaintiff in this
13 case. They've asserted four causes of action; two of which
14 are for specific performance to enforce the bylaws of the
15 corporation; third is for judicial dissolution; and the fourth
16 is for a declaratory judgment encompassing the three prior
17 causes of action.

18 Your Honor, I don't think the plaintiff here has
19 standing to assert enforcement of the bylaws. Under the
20 provisions of the Utah Not For Profit Corporation Act, Act
21 16-6(a)-101 at sec, the only parties who may bring an action
22 to enforce the bylaws or articles of incorporation would be
23 the members or the director of that corporation. There's no
24 dispute here that the plaintiff is neither a member, nor a
25 director of the Theta Phi House Corporation. That simply isn't

1 the case here; and I don't think they have standing in order to
2 enforce those claims, because of that.

3 With respect to judicial dissolution, another claim
4 they've alleged, only three parties can force a judicial
5 dissolution of a not-for-profit corporation. That's found in
6 16-6(a)-1414. The three parties who can enforce that are the
7 Attorney General for the Division, the Head -- the Director of
8 the Division of Corporations, a member or director of the not-
9 for-profit corporation, or a creditor of the not-for-profit
10 corporation who has reduced his claim to a judgment and has
11 established that the not-for profit corporation is insolvent.
12 None of that showing is made here.

13 The proper claim that plaintiff should have raised is
14 a breach of contract claims. I think, as Mr. Lund points out,
15 at best, they're an intended third-party beneficiary under the
16 agreement. That's a breach of contract claim. No such claim
17 has been raised by the plaintiff.

18 Now, if there is an intended third-party beneficiary,
19 there still must be some consideration to support the promise,
20 whether that consideration was provided by the intended third-
21 party consideration -- or the third party beneficiary, or
22 whether that consideration was provided by some other person.

23 THE COURT: Mutual obligations of the members of the
24 non-profit corporation.

25 MR. MANSFIELD: But what are those mutual obligations,

1 Judge? They're not set forth anywhere.

2 THE COURT: They're in the bylaws.

3 MR. MANSFIELD: They're not there, Judge. The mutual
4 obligations to support that promise just aren't there, Judge.
5 They have not pointed to that --

6 THE COURT: No, no. They don't have -- there doesn't
7 have to be separate consideration. In a third-party beneficiary
8 theory, there doesn't have to be separate consideration for
9 the one covenant to convey the property upon de-chartering
10 the local. All there has to be is that the members of the
11 corporation have agreed to certain legal benefits and legal
12 detriments. Every provision of the bylaws constitutes
13 consideration for the mutual covenants that are contained in
14 the bylaws.

15 MR. MANSFIELD: I understand that, Judge. I don't
16 believe, though -- I think in the -- with the promise to
17 convey the property to Tridel, I think that requires separate
18 consideration.

19 THE COURT: What's your best case for the proposition
20 that an intended third-party beneficiary must show separate
21 consideration for the third-party (inaudible)?

22 MR. MANSFIELD: Well, your Honor, there are no cases
23 that specifically address that; but in the case of AquaGin
24 vs. --

25 THE COURT: Let me be clear about that. You've got no

1 case that says that in order for an intended third-party
2 beneficiary to perform -- to enforce the covenant, he has to
3 show that the covenant is supported by consideration flowing
4 to or from the third-party --

5 MR. MANSFIELD: No, no, no, and that's not what I'm
6 arguing, Judge. It's not -- no, I agree with you.

7 THE COURT: All right.

8 MR. MANSFIELD: That does not need to be shown. There
9 just needs to be shown that some consideration existed; and
10 I don't think the consideration your Honor is pointing to
11 supports the promise to convey the real estate to the third-
12 party beneficiary, in this case, Delta Delta Delta.

13 Also, your Honor, they have not asserted a claim to
14 enforce that. There are no such claims in their complaint.
15 The claims are, as I mentioned; and they specifically stated
16 in their reply memorandum, I believe page 7, they've asserted
17 no breach of contract action, because it's not proper. They
18 don't need to do that. I don't think their claims are proper.
19 I understand where your Honor's coming from, but I don't think
20 that constitutes a valid consideration.

21 What (inaudible) as a consideration to support this
22 promise to convey, is the consulting services given over the
23 year -- we've referred to this tripartite agreement, and
24 they've referred to the Theta Phi House Corporation status is
25 a 50 -- election to be treated under the IRS tax codes as a

1 501(c) entity.

2 In order to establish that as valid consideration,
3 they must show that that was given contemporaneously with the
4 promise to convey; and they haven't shown that. It's their
5 burden to show that. That comes out of the case I was just
6 referring to, the AquaGin International vs. Calray case at
7 972 P.2d 411 Utah Supreme Court 1998. It must be given at
8 the time of the formation of the agreement.

9 I don't think that consideration exists, your Honor.
10 I understand your Honor's -- your Honor's comments; but I don't
11 think that constitutes a valid consideration to support the
12 agreement to tran -- to convey the real property to Theta Phi
13 -- or excuse me, to Tri Delta upon dissolution or revocation of
14 the local chapter. Thank you.

15 THE COURT: Mr. Lund.

16 MR. LUND: Your Honor, I think I'll keep it brief,
17 because your thinking is obviously in accord with our position.
18 This procedural issue Mr. Mansfield raises about the breach of
19 contract argument is first, not found in his briefs, and not
20 something that has been argued, except right now this very
21 minute.

22 I would inform the Court that we did request of
23 Mr. Mansfield back in February that he agree to an amendment
24 to the complaint to assert a breach of contract action; and he
25 never responded to that. I did not file an amended complaint.

1 He's briefed this as a contract case, and raised consideration;
2 and under 54, Rule 54, I believe you're entitled to grant
3 relief on the facts in front of you, if indeed the basis is
4 there to do so. So whether the grounds here -- this is -- this
5 is a --

6 THE COURT: Help me to understand what claim you think
7 you haven't asserted. I mean, you brought a claim for specific
8 performance.

9 MR. LUND: We did; and so I guess the idea would be is
10 if having sought that specific performance, we didn't somehow
11 or another couch it in a breach of contract language, that
12 would be the issue, is that the complaint --

13 THE COURT: Except the performance is just a remedy.
14 It's not a claim. The claim is breach of contract, and the
15 remedy is specific performance, if it's appropriate.

16 MR. LUND: But the basis for specific performance would
17 be, you know, again, I guess I couch it as terms of the bylaws.
18 If it's Mr. Mansfield that decided to argue those or actually
19 set a contractual relationship. That's how its been briefed.
20 So if the remedy we're seeking is specific performance, to
21 which we have prayed for, is on the basis of enforcing that
22 contractual obligation in the bylaws, I believe that's within
23 the pleadings.

24 THE COURT: What about the issue of whether or not you
25 have standing to dissolve a corporation?

1 MR. LUND: I suppose -- this is an interesting problem.
2 In some respects, if your Honor orders the specific performance
3 we're seeking, I suppose it's still of some interest to the
4 national corporation that a house corporation formed pursuant
5 to the structure that we're talking about is indeed dissolved
6 according to the bylaws. So isn't that a part of the specific
7 remedy that we're seeking, to have that other provision of the
8 bylaws complied with?

9 This is the other aspect of it. As I understand it --
10 and this isn't in the record, but practically speaking, as I
11 understand it, if national decided that the members of this
12 outfit that is the vestige of the house corporation were not
13 in good standing as members of Delta Delta Delta, the national
14 organization, and chose to simply declare they were no longer
15 members of Tri Delta -- which would be a sad affair. I mean,
16 they're all nice ladies who've been involved with the sorority
17 -- but it really has the ability to discharge all those folks
18 as members, and put its own board in place, you know, to
19 accomplish the same dissolution.

20 So I guess as a practical effect, I think that the
21 dissolution is prudent. Exactly who has standing to do that,
22 I suppose, if not us, who; is the question I would raise.

23 THE COURT: Well, the answer to that is the Attorney
24 General, or the members, or whoever has the claim reduced to
25 judgment, which potentially you could end up being. I guess

1 unless there's -- I mean, I don't think I can grant dissolution
2 of the corporation as contractual relief. I think that
3 ultimately your claim lies in the general Rubric of contract,
4 where the statute is clear on who can dissolve a corporation.
5 If they don't dissolve, they're in breach; but the question is,
6 what's the remedy for that?

7 MR. LUND: Uh-huh.

8 THE COURT: Are there any damages that flow from that?
9 Is that a situation where specific performance can be ordered?
10 I'm not clear on that, given the specificity of the statute
11 under which we're operating.

12 MR. LUND: Well, and I think that if your Honor were to
13 grant the other relief we're seeking, one would think that the
14 corporation would elect to dissolve. It's not clear what their
15 function would be; and maybe that has to be sorted out by the
16 Division of Corporations if we're not the ones withstanding.

17 THE COURT: All right, thank you. Mr. Mansfield, I'll
18 give you the last word.

19 MR. MANSFIELD: Yes, your Honor, and again, I don't
20 think the appropriate claims for the relief they seek have been
21 set forth here. Your Honor, there -- this issue of breach of
22 contract and no standing was specifically raised in our brief.
23 That's why they addressed it in their reply memorandum on page
24 7 or 8, saying, "We have not sought a breach of contract claim.

25 THE COURT: Well, let's see specifically what's pled.

1 MR. MANSFIELD: Well, let me -- let me find it here.

2 On page 2 to page 6 of the plaintiff's reply memorandum, your

3 Honor --

4 THE COURT: Let's look at the complaint.

5 MR. MANSFIELD: Okay. Oh, certainly.

6 THE COURT: First claim for relief, specific performance
7 to dissolve Theta Phi House Corporation. Second claim for
8 relief, judicial dissolution of Theta Phi House Corporation.
9 Third claim for relief, specific performance to convey
10 University of Utah house.

11 In paragraph 24, "According to Theta Phi House
12 Corporations Articles of Incorporations and bylaws, Theta
13 Phi House Corporation is obligated to convey title to the
14 University of Utah house and all other property of Theta Phi
15 House Corporation to DDD."

16 I mean, I can see your point. It doesn't say the
17 word "contract," but I mean, it's generally recognized in the
18 law that the articles of incorporation and bylaws constitute
19 contracts; and specific performance is a remedy that, generally
20 speaking, sounds in contract. So under notice pleading, I have
21 a hard time concluding that they haven't asserted a claim for
22 breach of contract here.

23 MR. MANSFIELD: But they specifically state in their
24 reply memorandum they have not asserted a breach of contract,
25 and that's at page 6 that I was referring to. I think we have

1 to go to what the plaintiff says his claims are; and this is on
2 page 6, and --

3 THE COURT: Of their reply?

4 MR. MANSFIELD: Of their reply, and let me read this.

5 "Theta Phi suggests its bylaws and articles constitute a
6 contract between House Corporation and its members, and
7 that DDD is not a member of House Corporation; and that DDD,
8 therefore, lacks the ability to enforce the provisions of House
9 Corporation bylaws.

10 "First and foremost, plaintiff has made no breach
11 of contract claim against Theta Phi House Corporation in its
12 complaint. This is Theta Phi's contrivance. DDD maintains
13 that the relief it seeks, the dissolution and conveyance of
14 the subject property, according to Theta Phi's own bylaws and
15 articles, is simply mandated by the governing documents of the
16 corporation." They specifically state they haven't asserted a
17 breach of contract claim.

18 THE COURT: I'm sorry, I'm still not finding that page.

19 MR. MANSFIELD: Oh.

20 THE COURT: That's in the plaintiff's reply memorandum?

21 MR. MANSFIELD: Yeah. May I approach, your Honor? You
22 can show you the --

23 THE COURT: Yeah.

24 MR. MANSFIELD: -- what I just read. That's under sub-
25 point (b). That's in -- their reply memorandum in support of

1 their motion for summary judgment.

2 THE COURT: What were you thinking, Mr. Lund?

3 MR. LUND: Well, I think I was thinking, where is he
4 getting the idea consideration even matters here in the context
5 of a third-party beneficiary? That's the context in which that
6 discussion goes on, as you see from the top of the boat.

7 Now I'm thinking, if he had a problem with this,
8 this is not the time to be arguing about it; and if it's
9 a substantive problem, I guess I could re-file the entire
10 pleading. I mean, the point of the matter is substantively,
11 if we're seeking to have an obligation enforced, and he
12 treats this as a contract problem, and argues the lack of
13 consideration is why the contract cannot be enforced, I think
14 either under a liberal amendment of the pleading, or under
15 54(b) -- there's a 54(c) that allows you to grant the relief
16 up until the time of final judgment as the evidence in front of
17 you permits, it's appropriate to grant the relief we're seeking
18 on the basis of the pleadings in front of us.

19 MR. MANSFIELD: But your Honor, that requires that
20 the evidence conform, and that the pleading be amended to
21 conform to the evidence. That's not what we have here. The
22 fact is they haven't asserted this claim. That's a claim they
23 should have asserted. It's not simply procedural shenanigans,
24 as Mr. Lund refers to. I mean, this is a requirement of
25 litigation that the parties put forth the required claims.

1 This is a situation where the house is owned by
2 a separate legal entity. It assumes all the responsibility
3 and liability for that ownership. Nothing -- none of that
4 liability or risk enures to the -- to Tri Delta, to Delta
5 Delta Delta. This has been a piece of property owned by the
6 Theta Phi House Corporation since its inception.

7 Now, that certainly -- the House Corporation which was
8 formed in the 1920's under another entity, certainly joined and
9 became part of the Tri Delta Delta Delta Association; but your
10 Honor, we think this is a claim that would sound in contract.
11 There has been no breach of contract, as argued by Mr. Lund.
12 I think their claims fail as a matter of law what they're
13 seeking, Judge. Thank you.

14 THE COURT: Let me ask you this, Mr. Mansfield. I
15 mean, I can see the problem. I can see the confusion; and I
16 don't want you to be prejudiced or surprised by the way I see
17 the case, and be misled by their pleadings. As I read their
18 claim for specific performance, to me that's a contract claim.

19 If you would prefer, and if you think that there would
20 be a different result achieved if they formally amended their
21 complaint, and made clear what the basis of their relief was,
22 and gave you a chance to respond to that, I mean, I would want
23 to know that.

24 MR. MANSFIELD: Well, no, I don't think that's the
25 case. The reason I've argued the breach of consideration, or

1 lack of consideration argument, Judge, under the contract
2 Rubric is because I think that's where this complaint -- or
3 the cause of action lies, and I think we've fully briefed it;
4 but when you have Mr. Lund, on behalf of plaintiff, coming
5 back and specifically stating, "No, there is no breach of
6 contract claim," I think that closes the door on them. They've
7 specifically stated that.

8 Even though in a situation with notice pleading, you
9 may allow a plaintiff to say, "Okay, yeah, you really did
10 assert a breach of contract claim," you know, we'll give you
11 that, because specific performance is a remedy. It's not a
12 cause of action, but, as your Honor pointed out, a remedy; but
13 if the plaintiff itself argues and asserts there is no breach
14 of contract claim, I don't think the Court can then fix the
15 complaint after the fact.

16 THE COURT: What you're suggesting is maybe this is a
17 judicial estoppel that they've been stuck with?

18 MR. MANSFIELD: Absolutely, Judge. Yes, I think so,
19 Judge.

20 THE COURT: Well, I think that that would be an unfair
21 result. Although it's a good argument, and I think that that
22 was an ill advised statement in the reply brief, maybe not
23 thought out as carefully as it should have been, but I don't
24 think that that fundamentally changes the equities here. I
25 don't think anybody's surprised by what's at stake, and what

1 are the relevant issues in this motion.

2 So I'm going to go ahead and decide the case based
3 upon the claim that was sought in the complaint, and what the
4 parties actually briefed and addressed. My view is that --
5 my tentative ruling is correct, at least with respect to the
6 claim for specific performance of conveyance of the house. I
7 am not at this time prepared to grant specific performance with
8 respect to dissolution of the corporation. I'm not sure that
9 this party on a contract theory has the right to require that.

10 So where does that leave us? I guess I haven't
11 decided the right to the obligation to dissolve either way
12 at this point in time. So we don't -- that would not give us
13 a final judgment, even with respect to the specific performance
14 claim, unless you just dismissed those other causes of action.

15 MR. LUND: Well, I believe I'd be inclined to do that,
16 but we'd probably need to confer with the client about that.

17 THE COURT: All right. Go ahead and prepare a motion
18 granting partial summary judgment -- I mean, an order granting
19 partial summary judgment with respect to specific performance
20 at the house, and then consider how you want to proceed,
21 because I don't think a trial would be helpful for me to
22 determine whether I have the right to dissolve the corporation.
23 Maybe further briefing would be helpful with respect to that,
24 because that really wasn't the thrust of what was briefed for
25 me today.

1 So consider either one or both of you filing a new
2 motion on that, or consider just simply, you know, walking
3 away with the chips that you've won, so that this case can be
4 appealed, and you get final decision. All right.

5 MR. LUND: Thank you, Judge.

6 (Hearing concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I, Beverly Lowe, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.

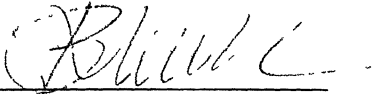
That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

I further certify that I am not interested in the outcome thereof.

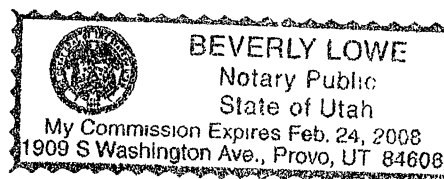
That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.

WITNESS MY HAND AND SEAL this 30th day of November 2007.

My commission expires:
February 24, 2008



Beverly Lowe
NOTARY PUBLIC
Residing in Utah County



An original and one copy of the articles of incorporation shall be delivered to the Division of Corporations and Commercial Code. If that division finds that the articles of incorporation conform to law, it shall, when all fees have been paid as prescribed in this title:

- (1) endorse on the original and one copy the word "filed" and the month, day, and year of the filing;
- (2) file the original in its office; and
- (3) issue a certificate of incorporation to which it shall attach the copy.

The certificate of incorporation, together with the attached copy of the articles of incorporation shall be returned to the incorporators or their representative.

1985

16-6-48. Effect of issuance of certificate of incorporation.

Upon the issuance of the certificate of incorporation, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this act, except as against the state in a proceeding to cancel or revoke the certificate of incorporation.

1963

16-6-49. Right to amend articles of incorporation — Conversion to business corporation.

(1) A nonprofit corporation may amend its articles of incorporation at any time and in any respect, so long as the amended articles of incorporation only contain provisions that are lawful under this chapter.

(2) A nonprofit corporation may amend its articles of incorporation to become a corporation under Title 16, Chapter 10a, Utah Revised Business Corporation Act, so long as the amended articles of incorporation only contain provisions that are lawful under that chapter.

1992

16-6-50. Procedure to amend articles of incorporation.

Amendments to the articles of incorporation shall be made in the following manner:

(1) Where there are members having voting rights, the governing board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a meeting of the members having voting rights, which may be either an annual or special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this act for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the governing board upon receiving the vote of two-thirds of the trustees in office.

Any number of amendments may be submitted and voted upon at any one meeting.

1963

16-6-51. Articles of amendment.

The articles of amendment shall be signed by the corporation, by any one or more of its principal officers and verified by one of the officers signing the articles, and shall set forth:

- (1) the name of the corporation;
- (2) the amendment so adopted;
- (3) when the members have voting rights:

(a) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting and that such amendment received at least two thirds of the votes which members present at such meeting or represented by proxy were entitled to cast or

(b) a statement that the amendment was adopted by a consent in writing signed by all members entitled to vote on the amendment; and

(4) when there are no members, or no members having voting rights, a statement of that fact, the date of the meeting of the governing board at which the amendment was adopted, and a statement of the fact that the amendment received the vote of two-thirds of the trustees in office.

1985

16-6-52. Filing articles of amendment.

An original and one copy of the articles of amendment shall be delivered to the Division of Corporations and Commercial Code. If the Division of Corporations and Commercial Code finds that the articles of amendment conform to law, it shall, when all fees have been paid as prescribed in this title:

- (1) endorse on the original and one copy the word "filed" and the month, day, and year of the filing;
- (2) file the original in its office; and
- (3) issue a certificate of amendment to which it shall attach the copy.

The certificate of amendment, together with the attached copy of the articles of amendment shall be returned to the corporation or its representative.

1985

16-6-53. Effect of certificate of amendment.

Upon the issuance of the certificate of amendment by the Division of Corporations and Commercial Code the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason.

1984

16-6-53.5. Restated articles of incorporation — Filing — Issuance and effect of certificate of restatement.

(1) A nonprofit corporation may restate its articles of incorporation which have been previously amended in the following manner:

(a) The board of directors shall adopt a resolution which states the proposed restated articles of incorporation and sets forth without change the corresponding provisions of the articles of incorporation as stated originally and as previously amended.

(b) Upon the adoption of the resolution, the restated articles of incorporation shall be signed for the corporation by its president or a vice-president and by its secretary or assistant secretary.

(2) An original and one copy of the restated articles of incorporation shall be delivered to the Division of Corporations and Commercial Code. If that division finds that the